In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 9924 of 2006

Date of Decision: May 25, 2007

Arvind Singh and another.

....Petitioners

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Dr. Balram Gupta, Sr. Advocate with
Mr. Pankaj Shama, Advocate
for the petitioners.

Mr. B.S. Chahal, AAG, Punjab
for respondents No.1 and 2.

Mr. Rajiv Atma Ram, Sr. Advocate
Mr. Sunil Nehra, Advocate
for respondent No.3.

...

J.S. Khehar, J.

Petitioners No.1 and 2 were appointed by way of direct recruitment through the Punjab Public Service Commission as Sub Divisional Engineers in the Public Works Department (Public Health Branch) in the years 1972 and 1976, respectively. As against the aforesaid, respondent No.3 was also inducted into the service of the respondents by way of direct recruitment as Sub Divisional Engineer on 24.10.1979. It would, however, be pertinent to mention, that the appointment of

respondent No.3 was in the Mechanical wing. At the time of their induction into service, the posts of Sub Divisional Engineer were Class II posts. These posts, however, have now been notified as Class-I posts.

The Public Works Department (Public Health Branch) has since been renamed as the Punjab Water Supply and Sanitation Department.

By an order dated 4.10.1991, respondent No.3 was promoted on adhoc basis as Executive Engineer and posted at Public Health (Mechanical) Division, Faridkot. The aforesaid promotion was for a limited period of six months. The aforesaid order of adhoc promotion expressly clarified, that the promotion of respondent No.3 in the senior scale on regular basis, would be made only after his claim was approved by the screening committee and/or the Punjab Public Service Commission.

It would be pertinent to mention, that at the time of adhoc promotion of respondent No.3 vide order dated 4.10.1991, the claim of the petitioners was not considered, despite the fact, that the petitioners were appointed to the cadre of Sub Divisional Engineers, years before the appointment of respondent No.3 to the said cadre. It is the contention of the learned counsel for the petitioners, that their claim for promotion on adhoc basis had not been considered because consideration at the time of promotion of respondent No.3 had been limited to only such candidates who belonged to the Mechanical wing, and since the petitioners did not belong to that wing, the respondents had found no justification in even considering their claim.

In order to substantiate their claim of superiority over respondent No.3, learned counsel for the petitioners vehemently contends, that inter se seniority in the cadre of Sub Divisional Engineers, is to be

determined/maintained jointly without reference to their source of recruitment, as also, without reference to their specialisation. In other words, it is the contention of the learned counsel for the petitioners, that it would make no difference in the determination of seniority, whether the individuals under reference had been appointed by way of direct recruitment or by way of promotion. Likewise, it is asserted, that it would make no difference in the process of determining seniority, whether the concerned individuals had been appointed to the posts in the Civil or Electrical or Mechanical wings (for which separate qualifications are envisaged by the statutory rules).

In order to substantiate his aforesaid contention, learned counsel for the petitioners has invited our attention to the fact, that the issue of maintaining a joint seniority list for the aforesaid three wings came up for consideration before this Court in Surinder Singh Vs. State of Punjab and others (Civil Writ Petition No.15240 of 1994). It is also pointed out, that in the aforesaid writ petition, respondent No.3 was arrayed as party - respondent No.7. Apart from the aforesaid writ petition, reference was made to a similar challenge raised in this Court in M.P. Ramgaria Vs. State of Punjab and others (Civil Writ Petition No.691 of 1994), wherein the petitioner contested the action of the respondents in determining the rights of the members of the service, for purposes of onward promotion, on the basis of separate seniority lists, maintained for the said three wings i.e. Civil, Electrical and Mechanical. It would be pertinent to mention, that Civil Writ Petition No.15240 of 1994 and Civil Writ Petition No.691 of 1994 were disposed of by a common order dated 14.2.2000. The eventual conclusion recorded by this Court while disposing of the aforesaid writ

petitions, is being extracted hereunder:-

> "For the foregoing reasons, both the writ petitions are allowed to the extent that a common joint working seniority list in all the ranks of Class II and Class I i.e. Assistant Engineers, Assistant Executive Engineers, Executive Engineers and Superintending Engineers has to be maintained for promotion to the next ranks irrespective of the fact whether a person is working in one or the other wing and all the persons have to be considered in accordance with one seniority and subject to his fulfilling the qualifications under the rules. The prayer of the petitioners in C.W.P. No 691 of 1994 for quashing the appointment order of respondent No.3 as Superintending Engineer dated November 11, 1993, is rejected. It may, however, be observed that the directions given in this judgement would be prospective in nature and any promotions which are not subject to the decision of these case which may have already been ordered would not be affected. The promotions which were subject to the decision of these cases would, however, be reviewed."

It would be pertinent to mention, that at the time when this Court decided Surinder Singh and M.P. Ramgaria's cases (supra), respondent No.3 had been promoted as Executive Engineer on adhoc basis, by an order dated 4.10.1991. Since the instant order will eventually have a bearing on the controversy being adjudicated upon, it is necessary to extract the same herein. Relevant part of the order dated 4.10.1991, promoting respondent No. 3 as Executive Engineer on adhoc basis, is being reproduced

hereunder:-

> "Sh. Sanjay Verma. Sub Divisional Engineer, P.W.D. Public Health Department (Mechanical) is promoted as Executive Engineer Ad-hoc in the scale of Rs. 3000-100-4000-125-4500 for six months or appointment in the senior scale on regular basis in the PSE-1 (Public Health) by the screening committee/Punjab Public Service Commission whichever is earlier and he can be reverted any time in the case of non-availability of the post.
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> 2. The above promotion shall be subject to the clarification & judgment of Hon'ble Supreme Court in the appeal No.1.A-7 in C.A. no. 3792/1989-Ajit Singh Janjua & others versus Punjab Govt.
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> 3. The inter-se seniority of Executive Engineers shall be decided as per the provisions of PSE Class-1 rules of PWD (Public Health) 1961, after the receipt of recommendations from Punjab Public Services Commission.
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> 4. Sh. Sanjay Verma, is posted as Executive Engineer against a vacant post at Public Health (Mechanical) Division Faridkot. This order shall be implemented with immediate effect.

It would be pertinent to mention, that the order passed by this Court on 14.2.2000, which was made operative prospectively, could not be deemed to have any effect on the order dated 4.10.1991, extracted hereinabove as the same had been issued before the decision of the two cases referred to above. In fact, there is no dispute on this aspect of the matter between the counsel

for the rival parties.

Consequent upon the disposal of Surinder Singh and M.P. Ramgaria's cases (supra), a fresh exercise was conducted at the hands of the official respondents to determine the inter se seniority of Sub Divisional Engineers. In the aforesaid determination, the names of Arvinder Singh – petitioner No.1 and S.R. Aggarwal – petitioner No.2 were placed at Sr. Nos.109 and 153 respectively, whereas, the name of respondent No.3 – Sanjay Verma was placed at Sr. No.201. It is, therefore apparent, that both the petitioners were assigned a position in the seniority list in the cadre of Sub Divisional Engineers above respondent No.3. On the basis of the aforesaid seniority position assigned to the petitioners, they desire to impugn, through the instant writ petition, the order dated 25.7.2003 by virtue of which respondent No.3 has been promoted to the rank of Executive Engineer without considering their claim. Relevant extract of the aforesaid order is being reproduced hereunder:-

> "Shri Sanjay Verma Sub Divisional Engineer was promoted as Executive Engineer on adhoc basis vide office order dated 04.10.1991, Endstt. No. 18/104/91-3 Estt.-2/5571 dated 04.10.1991. The case for promotion of this officer, was considered by the Screening Committee in the meeting held on 07.05.2003. The Punjab Public Service Commission vide their letter No.241/93/Estt.-4/20864 dated 25.07.2003, have approved the promotion of Shri Sanjay Verma as Executive Engineer on regular basis with effect from the year 1991.
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> 2. The Governor of Punjab has been pleased to approved the promotion of Shri Sanjay Verma as Executive Engineer

w.e.f. The year 1991 in the pay scale of Rs. 3000-100-4000-125-4500."

While it is the contention of the learned counsel for the petitioners, that the judgement rendered by this Court in Surinder Singh and M.P. Ramgaria's cases (supra) will be applicable to the consideration effected in the meeting held by the Screening Committee on 7.5.2003, and the determination of the Punjab Public Service Commission, communicated on 25.7.2003 (ordering the promotion of respondent No.3 as Executive Engineer on regular basis), it is the vehement contention of the learned counsel representing respondent No.3, that the instant order of promotion dated 25.7.2003 stands protected by the judgement in Surinder Singh and M.P. Ramgaria's cases (supra) on account of the fact, that the promotion of respondent No.3 has been related back to 4.10.1991 i.e. a date which precedes the date of the decision rendered in the aforesaid case i.e. it precedes 14.2.2000.

On the basis of the contention advanced by the learned counsel for the rival parties, the only question to be adjudicated upon is, whether the order dated 25.7.2003, extracted hereinabove, falls within the protection envisaged in the order dated 14.2.2000, whereby Surinder Singh and M.P. Ramgaria's cases (supra) were disposed of collectively.

Having considered the matter at some length, we are of the view, that all promotions effected prior to 14.2.2000 (when the judgement in Surinder Singh and M.P. Ramgaria's cases (supra) was delivered) would be protected and all considerations for promotion after the aforesaid decision would have to be made in consonance with the aforesaid judgement. In other words, if an order of promotion had been made on the basis of

separate seniority lists maintained for the Civil, Electrical and Mechanical wings prior to 14.2.2000, the same stood protected. Accordingly, considerations for promotion made after 14.2.2000 had to be made on the basis of a joint seniority list for the three wings i.e. Civil, Electrical and Mechanical. It is not a matter of dispute, that the claim of promotion of respondent No.3 as Executive Engineer in the order dated 25.7.2003 is based on his position in the seniority list in the Mechanical wing and not on the basis of his position in the seniority list maintained jointly for the Civil, Electrical and Mechanical wings. The same would, therefore, have to be in consonance with the order dated 14.2.2000, passed in Surinder Singh and M.P. Ramgaria's cases (supra). We have extracted hereinabove, the order dated 25.7.2003. The same reveals, that the claim of respondent No.3 for promotion to the rank of Executive Engineer was considered by the Screening Committee in its meeting held on 7.5.2003, and thereafter, approved by the Punjab Public Service Commission on 25.7.2003. The consideration at the hands of the Screening Committee, as well as, the Punjab Public Service Commission were both after the date when this Court disposed of Surinder Singh and M.P. Ramgaria's cases (supra) on 14.2.2000. The aforesaid consideration, therefore, could have only been made by following the judgement rendered by this Court on 14.2.2000. In our view, since consideration of the claim of respondent No.3, as is apparent from the impugned order, is in conflict with the decision rendered by this Court in Surinder Singh and M.P. Ramgaria's cases (supra), the same is liable to be set aside. Ordered accordingly.

It would be pertinent to mention, that a half hearted effort was made at the hands of the respondents to assert, that the statutory rules

prescribed for promotion from the rank of Sub Divisional Engineer to the rank of Executive Engineer, envisage separate consideration for personnel belonging to the Civil, Electrical and Mechanical wings. It is not possible for us to accept the instant plea at the hands of the respondents, firstly, because the said matter had been adjudicated upon by this Court in Surinder Singh and M.P. Ramgaria's cases (supra), and that, the judgement rendered by this Court in the aforesaid case on 14.2.2000 has attained finality, as well as, on account of the fact, that the issues canvassed on behalf of the respondents had been considered and finally adjudicated upon by the Apex Court in Chandigarh Administration Vs. K.K. Jerath, JT 1994 (6) SC 315.

For the reasons recorded hereinabove, the order dated 28.7.2003, promoting respondent No.3 to the rank of Executive Engineer without considering the claim of the petitioners who were positioned higher in the seniority list in the rank of Sub Divisional Engineer, is hereby set aside. In view of the above, the respondents are directed to reconsider the issue afresh, in accordance with law, as well as, in accordance with the judgement rendered by this Court in Surinder Singh and M.P. Ramgaria's cases (supra), by taking into consideration the claims of the petitioners for promotion to the rank of Executive Engineer alongwith the claim of respondent No.3 for such promotion.

Disposed of accordingly.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

May , 2007
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